

APPEAL NO. 171088
FILED JUNE 21, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on March 28, 2017, in (city) Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issues by deciding that: (1) the compensable injury of (date of injury), does not extend to an aggravation of the arthritic degeneration at L1-2 and L3-4, L4-5 disc extrusion, L5 nerve root compression, and L5-S1 disc bulge; (2) the appellant (claimant) had disability resulting from the compensable injury of (date of injury), for the period of March 22 through July 30, 2016, but not from August 1, 2016, through the date of the CCH; (3) the claimant reached maximum medical improvement (MMI) on May 5, 2016; and (4) the claimant's impairment rating (IR) is five percent. The claimant appealed, disputing the hearing officer's determinations of extent of injury, disability, MMI and IR. The claimant contends that he provided sufficient evidence to establish the compensable injury extends to the disputed conditions, that he is not yet at MMI, and that he continues to have disability. The respondent (carrier) responded, urging affirmance of the disputed extent of injury, MMI, IR, and disability determinations.

DECISION

Affirmed in part as reformed and reversed and remanded in part.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury), and that the carrier has accepted a lumbar strain as a component of the compensable injury. The claimant testified that he was injured when he fell.

EXTENT OF INJURY

The hearing officer's determination that the compensable injury of (date of injury), does not extend to an aggravation of the arthritic degeneration at L1-2 and L3-4, L4-5 disc extrusion, L5 nerve root compression, and L5-S1 disc bulge is supported by sufficient evidence and is affirmed.

MMI

The hearing officer's determination that the claimant reached MMI on May 5, 2016, is supported by sufficient evidence and is affirmed.

IR

The hearing officer's determination that the claimant's IR is five percent is supported by sufficient evidence and is affirmed.

DISABILITY

The disability issue in dispute reported in the Benefit Review Conference Report was as follows:

Did the claimant have disability resulting from an injury sustained on [(date of injury)], for the period of [March 22, 2016], through the present?

At the CCH the parties agreed to amend the disability issue to read as follows:

Did the claimant have disability resulting from the compensable injury of (date of injury), for the period of March 22 through July 31, 2016, and again from September 1, 2016, through March 27, 2017?

We note that the hearing officer's decision and order failed to include the disability issue as modified by the parties. The parties amended the disability issue at the CCH to include two separate periods of disability.

The first period of disability in dispute was from March 22 through July 31, 2016. That portion of the hearing officer's determination that the claimant had disability resulting from the compensable injury of (date of injury), for the period of March 22 through July 30, 2016, is supported by sufficient evidence and is affirmed. The hearing officer failed to make a determination of disability for July 31, 2016. Accordingly, we reverse the hearing officer's decision as being incomplete and remand to the hearing officer to make a determination of disability for July 31, 2016.

The hearing officer determined that the claimant did not have disability from August 1, 2016, through the date of the CCH. However, as noted above the issue was amended into two separate periods of dispute which did not include the month of August. Accordingly, we strike that portion of the hearing officer's disability determination that the claimant did not have disability from August 1 through August 31, 2016, as exceeding the scope of the issue.

The second period of disability in dispute was from September 1, 2016, through March 27, 2017. That portion of the hearing officer's determination that the claimant did not have disability from September 1, 2016, through March 27, 2017, is supported by sufficient evidence and is affirmed. We strike that portion of the hearing officer's disability determination that the claimant did not have disability on March 28, 2017 (the date of the CCH), as exceeding the scope of the issue.

SUMMARY

We affirm the hearing officer's determination that the compensable injury of (date of injury), does not extend to an aggravation of the arthritic degeneration at L1-2 and L3-4, L4-5 disc extrusion, L5 nerve root compression, and L5-S1 disc bulge.

We affirm the hearing officer's determination that the claimant reached MMI on May 5, 2016,

We affirm the hearing officer's determination that the claimant's IR is five percent.

We affirm that portion of the hearing officer's disability determination that the claimant had disability for the period of March 22 through July 30, 2016.

We affirm that portion of the hearing officer's disability determination that the claimant did not have disability from September 1, 2016, through March 27, 2017.

We strike that portion of the hearing officer's disability determination that the claimant did not have disability from August 1 through August 31, 2016, as exceeding the scope of the issue.

We strike that portion of the hearing officer's disability determination that the claimant did not have disability on March 28, 2017 (the date of the CCH), as exceeding the scope of the issue.

We reverse the hearing officer's disability determination as being incomplete and remand to the hearing officer to determine disability for July 31, 2016.

REMAND INSTRUCTIONS

On remand the hearing officer should make a determination of disability for July 31, 2016, which is supported by the evidence.

Pending resolution of the remand, a final decision has not been made in this case. However, since reversal and remand necessitate the issuance of a new decision and order by the hearing officer, a party who wishes to appeal from such new decision must file a request for review not later than 15 days after the date on which such new decision is received from the Texas Department of Insurance, Division of Workers' Compensation, pursuant to Section 410.202 which was amended June 17, 2001, to exclude Saturdays and Sundays and holidays listed in Section 662.003 of the Texas Government Code in the computation of the 15-day appeal and response periods. See Appeals Panel Decision 060721, decided June 12, 2006.

The true corporate name of the insurance carrier is **FEDERAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
1999 BRYAN STREET SUITE 900
DALLAS, TEXAS 75201.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge